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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/051,778	01/17/2002	Orhan Earl Beckman	10016640-1	2741
22879	7590	11/10/2009	EXAMINER	
HEWLETT-PACKARD COMPANY Intellectual Property Administration 3404 E. Harmony Road Mail Stop 35 FORT COLLINS, CO 80528				LET, THOMAS J
ART UNIT		PAPER NUMBER		
2625			NOTIFICATION DATE	
11/10/2009			DELIVERY MODE	
ELECTRONIC				

Please find below and/or attached an Office communication concerning this application or proceeding.

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ORHAN EARL BECKMAN and JENNIFER LEIGH FARRELL

Appeal 2009-004676
Application 10/051,778¹
Technology Center 2600

Decided: November 10, 2009

Before JOHN C. MARTIN, ROBERT E. NAPPI,
and MARC S. HOFF, *Administrative Patent Judges*.

HOFF, *Administrative Patent Judge*.

DECISION ON APPEAL

¹ The real party in interest is Hewlett-Packard Company.

STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134 from a Final Rejection of claims 3, 4, 7-9, 12, 13, and 15-44. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm-in-part.

Appellants' invention concerns various systems, methods, and programs embodied on computer-readable mediums which generate a printed publication, wherein an ephemeral interest is input into a client. The ephemeral interest is of use in identifying at least one content item to be included in the printed publication. Entry of the ephemeral interests may occur either manually or by scanning a travel itinerary, wherein the scanned content is parsed to find the ephemeral interests contained therein. The publication request may be based at least in part upon the ephemeral interest (Abstract; Spec. 7:4-22, 15:28-32).

Claim 7 is exemplary:

7. A method for generating a publication, comprising:

inputting an ephemeral interest into a client by scanning a travel itinerary to generate a digital representation of the travel itinerary, the travel itinerary including the ephemeral interest, wherein the ephemeral interest is of use in identifying at least one content item to be included in the publication;

requesting the publication based at least in part upon the ephemeral interest from a publication system; and

printing out the publication received from the publication system, the publication including the at least one content item.

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

DeLorme

US 5,948,040

Sep. 7, 1999

Claims 3, 4, 7-9, 12, 13, and 15-44 stand rejected under 35 U.S.C. § 102(b) as being anticipated by DeLorme.

Rather than repeat the arguments of Appellants or the Examiner, we make reference to the Appeal Brief (filed May 6, 2008) and the Examiner's Answer (mailed July 23, 2008) for their respective details.

ISSUES

Appellants contend that DeLorme teaches a planning session where a user provides information in response to user inquiries as opposed to the claimed subject matter that requires "inputting an ephemeral interest into a client by scanning a travel itinerary" (App. Br. 12). Appellants contend further that DeLorme does not disclose that the scanned information can be used as a basis for selecting content or options within the travel itinerary process (App. Br. 13).

The Examiner finds DeLorme teaches the step of scanning a document containing ephemeral interest using a "text/graphic scanner or *reader* input" (Ans. 3, 16; FF 4 (emphasis added)). The Examiner finds further that the printed publication of DeLorme includes encoding such as a bar code that can be read by a scanner or a reader (Ans. 16; FF 2). The Examiner concludes that it is inherent that the publication's barcodes can be scanned or read at the same workstation, to alter the information that a user may want to change which would later be printed with the added or altered temporal interests (Ans. 16).

Appellants' contentions present us with the following issue:

Did Appellants show that the Examiner erred in holding that DeLorme teaches a method for generating a publication including the step of inputting

an ephemeral interest into a client by scanning a document that includes an ephemeral interest, such as a travel itinerary or a ticket to an event, to generate a digital representation of the document, wherein the ephemeral interest is used to identify at least one content item to be included in the publication?

FINDINGS OF FACT

The following Findings of Fact (FF) are shown by a preponderance of the evidence.

The Invention

1. According to Appellants, the invention concerns various systems, methods, and programs embodied on computer-readable mediums which generate a printed publication, wherein an ephemeral interest is input into a client and the ephemeral interest is of use in identifying at least one content item to be included in the printed publication. Entry of the ephemeral interests may occur either manually or by scanning a travel itinerary, wherein the scanned content is parsed to find the ephemeral interests contained therein. The publication request may be based at least in part upon the ephemeral interest (Abstract; Spec. 7:4-22, 15:28-32).

DeLorme

2. DeLorme teaches a travel reservation information and planning system that generates a “map ticket” output in various media for guidance and transactions en route, wherein these printed documents may be encoded with bar or alphanumeric codes for automated recognition and access (Abstract; col. 8, ll. 55-65; col. 15, ll. 33-49; col. 15, l. 61–col. 16, l. 5).

3. DeLorme teaches that monitor 115 includes a graphical user interface having several input menus, WHERE?, WHO/WHAT?, WHEN?, and HOW?, which enable the user 100 to input selectable, geographic, topical, temporal, and transactional data records and relational processing. Sub-menus provide further capabilities: e.g., routing, topical searching, searches of event calendars, almanacs, appointment books, related itinerary scheduling, and trip budgeting issues, plus travel arrangement availabilities or other goods/services offers. A point-of-interest database lets users pick types of attractions or accommodations within a user-selected region around routes of travel. Users engage in an iterative planning process, revising or editing travel plans, previewing travel-logs of alternate routes, selecting point of interest parameters, and comparing times and costs of transportation options, in order to achieve a satisfactory travel plan. The system provides printed or electronic output that may include any one or more of text itinerary, ordered set of travel maps, customized collection of information on temporal events-of-interest (EOI) or points-of-interest (POI) information, and a selected array of valid reservation confirmations, tickets, and/or discount coupons coded with elements for automated recognition and processing (Abstract; Fig. 1A; col. 15, l. 33–col. 16, l. 5; col. 17, ll. 25-26).

4. DeLorme teaches scanning input using a “text/graphic scanner or reader input” (col. 14, ll. 62-64).

5. DeLorme teaches that hotel chains, state tourism bureaus, or local chambers of commerce could publish TRIPS embodiments wholly on disk media—as digital travel brochures—for planning trips and printing maps, discount offers, trip directions, and other such information about a limited

range of attractions, events, or seasonal activities confined exclusively to “their” accommodations or local venue (col. 13, ll. 65-67).

PRINCIPLES OF LAW

Anticipation pursuant to 35 U.S.C. § 102 is established when a single prior art reference discloses expressly or under the principles of inherency each and every limitation of the claimed invention. *Atlas Powder Co. v. IRECO Inc.*, 190 F.3d 1342, 1347 (Fed. Cir. 1999); *In re Paulsen*, 30 F.3d 1475, 1478-79 (Fed. Cir. 1994).

Analysis of whether a claim is patentable over the prior art under 35 U.S.C. § 102 begins with a determination of the scope of the claim. We determine the scope of the claims in patent applications not solely on the basis of the claim language, but upon giving claims their broadest reasonable construction in light of the specification as it would be interpreted by one of ordinary skill in the art. *In re Am. Acad. of Sci. Tech Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004). The properly interpreted claim must then be compared with the prior art.

In an appeal from a rejection for anticipation, Appellants must explain which limitations are not found in the reference. *See Gechter v. Davidson*, 116 F.3d 1454, 1460 (Fed. Cir. 1997) (“[W]e expect that the Board’s anticipation analysis be conducted on a limitation by limitation basis, with specific fact findings for each *contested* limitation and satisfactory explanations for such findings.” (emphasis added)); *see also In re Kahn*, 441 F.3d 977, 985-86 (Fed. Cir. 2006).

Means-plus-function claim language must be construed in accordance with 35 U.S.C. § 112, ¶ 6 by “look[ing] to the specification and

interpret[ing] that language in light of the corresponding structure, material, or acts described therein, and equivalents thereof, to the extent that the specification provides such disclosure.” *In re Donaldson Co., Inc.*, 16 F.3d 1189, 1193 (Fed. Cir. 1994) (en banc).

ANALYSIS

Claims 7, 37, and 39-41

Independent claim 7 recites “inputting an ephemeral interest into a client by scanning a travel itinerary to generate a digital representation of the travel itinerary, the travel itinerary including the ephemeral interest, wherein the ephemeral interest is of use in identifying at least one content item to be included in the publication.”

The Examiner finds that DeLorme teaches the step of scanning a document containing ephemeral interest using a “text/graphic scanner or *reader* input” (Ans. 3, 16; FF 4 (emphasis added)). The Examiner finds further that the printed publication of DeLorme includes encoding such as a bar code that can be read by a scanner or a reader (Ans. 16; FF 2). The Examiner concludes that it is inherent that, since the publication’s barcodes can be scanned or read at the same workstation, a user may scan a travel itinerary to alter their travel plans, which may be printed based upon the added or altered temporal/ephemeral interests (Ans. 16).

Appellants contend that DeLorme teaches a planning session where a user provides information in response to user inquiries as opposed to the claimed subject matter that requires “inputting an ephemeral interest into a client by scanning a travel itinerary” (App. Br. 12). Appellants contend further that DeLorme does not disclose that the scanned information can be

used as a basis for selecting content or options within the travel itinerary process (App. Br. 13). In particular, Appellants argue that the scanning of a travel itinerary would solely lead to a scanned version of the itinerary and would not aid in producing a publication in the manner claimed (App. Br. 13). Appellants contend that the bar coded information generated on the printed publication of DeLorme is only used to gain access or entry and that the scanning device is not used to produce a printed publication based at least in part upon an ephemeral interest printed on the scanned document (App. Br. 14; FF 2).

Although the system of DeLorme generates a printed publication that may include various ephemeral interests, we agree with Appellants that DeLorme does not disclose that the ephemeral interests from the scanned document are used to determine the content published on the printed publication. Rather, DeLorme teaches that most of the ephemeral interests are inputted manually by the user through the WHERE?, WHO/WHAT?, WHEN?, and HOW? menus (FF 3). DeLorme is silent as to what may be scanned by the scanning device and how that information is processed. Further, DeLorme is silent as to whether the scanned information is digitized or parsed and whether the digitized information can be used to determine the content in the printed publication.

We therefore find that DeLorme does not teach all the limitations of representative claim 7. Thus, we find error in the Examiner's rejection of claim 7 and that of dependent claims 37 and 39-41 under 35 U.S.C. § 102(b) as anticipated by DeLorme, and we will not sustain the rejection.

Claims 3, 4, 8, 38, and 42-44

Independent claim 8 recites “inputting an ephemeral interest into a client by scanning a ticket to an event to generate a digital representation of the ticket, the ticket including the ephemeral interest, wherein the ephemeral interest is of use in identifying at least one content item to be included in the publication.”

The Examiner finds, similar to claim 7 *supra*, that DeLorme teaches the step of scanning a document containing ephemeral interest, such as a ticket to an event, using a “text/graphic scanner or *reader* input” (Ans. 17; FF 4 (emphasis added)). The Examiner finds further that the printed publication of DeLorme includes encoding such as a bar code that can be read by a scanner or a reader (Ans. 17; FF 2). The Examiner concludes that it is inherent that, since the publication’s barcodes can be scanned or read at the same workstation, a user may scan the event ticket to alter their travel plans, which may be printed based upon the added or altered temporal/ephemeral interests (Ans. 17).

Appellants contend that the scanning device of DeLorme is not disclosed to be used to produce or generate a publication based at least in part upon an ephemeral interest from an event ticket (App. Br. 17).

Although the system of DeLorme generates a printed publication that may include various ephemeral interests, we agree with Appellants that DeLorme does not disclose that the ephemeral interests from the scanned document are used to determine the content published on the printed publication.

We find therefore, for the same reasons given with respect to claim 7 *supra*, that DeLorme does not teach all the limitations of representative

claim 8. Thus, we find error in the Examiner's rejection of claim 8 and that of dependent claims 3, 4, 38, and 42-44 under 35 U.S.C. § 102(b) as anticipated by DeLorme, and we will not sustain the rejection.

Claims 9, 12, and 13

We select claim 9 as representative of this group of claims, pursuant to our authority under 37 C.F.R. § 41.37(c)(1)(vii).

Claim 9 requires "code that inputs an ephemeral interest, wherein the ephemeral interest is of use in identifying at least one content item to be included in the publication, and the ephemeral interest further comprises at least one portion of a travel itinerary."

Appellants argue that DeLorme does not disclose that scanned information, such as a portion of a travel itinerary, can be used as a basis for selecting content or options that input an ephemeral interest, wherein the ephemeral interest is of use in identifying at least one content item to be included in the publication, and the ephemeral interest further comprises at least one portion of a travel itinerary within the travel itinerary process described in the patent (App. Br. 20).

The Examiner finds that the computer algorithms (i.e., code) in the TRIPS system of DeLorme accomplishes the step of inputting ephemeral interests, which are used to generate a customized travel plan that may be printed (Ans. 18; FF 3).

We agree with the Examiner's finding that the graphical user interface of the TRIPS system is representative of the portion of code that inputs the ephemeral interests entered by the user 100, which will be used to determine the content of the printed publication, since a graphical user interface is made of software programming code (FF 3). Although Appellants map the

claimed subject matter that describes the code that inputs an ephemeral interest to a portion of the Specification that describes the scanner, we do not find Appellants' argument commensurate with the scope of the claim 9, since claim 9 does not require that the information be scanned (App. Br. 4; Spec. 15:29-32).

We therefore find no error in the Examiner's rejection of claim 9 under 35 U.S.C. § 102, nor that of claims 12 and 13 not separately argued with particularity, and we will sustain the rejection of these claims.

Claim 15

Claim 15 requires "code that inputs an ephemeral interest, wherein the ephemeral interest is of use in identifying at least one content item to be included in the publication, wherein the ephemeral interest further comprises at least one portion of a ticket to an event."

Appellants argue that DeLorme does not disclose that scanned information, such as a portion of a travel itinerary, can be used as a basis for selecting content or options that inputs an ephemeral interest, wherein the ephemeral interest is of use in identifying at least one content item to be included in the publication, and the ephemeral interest further comprises at least one portion of a travel itinerary within the travel itinerary process described in the patent (App. Br. 23).

The Examiner finds that the computer algorithms (i.e., code) in the TRIPS system of DeLorme accomplishes the step of inputting ephemeral interests, which are used to generate a customized travel plan that may be printed (Ans. 18; FF 3).

For the same reason noted *supra* with respect to claim 9, we agree with the Examiner's finding that the graphical user interface of the TRIPS

system is representative of the portion of code that inputs the ephemeral interests, which will be used to determine the content of the printed publication.

We therefore find no error in the Examiner's rejection of claim 15 under 35 U.S.C. § 102 and we will sustain the rejection of this claim.

Claim 16

Claim 16 requires a

means for inputting an ephemeral interest, wherein the ephemeral interest is of use in identifying at least one content item to be included in the publication, and the ephemeral interest comprising: at least a portion of a travel itinerary, at least a portion of a ticket to an event, or both.

The Examiner finds that the system means is interactively achieved by DeLorme where a user responds to the questions: WHERE?, WHO/WHAT?, WHEN?, and HOW? (Ans. 19). The Examiner finds further that, when the user generates the printed publication, any scanned information can be included as in the publication that "includes related attractions, events, or seasonal activities confined exclusively to 'their' accommodations or local venue" (Ans. 19; FF 5).

Although (in the Summary of the Claimed Subject Matter section of the Appeal Brief) Appellants define the means for inputting an ephemeral interest as the input device 136 of Figure 1, Appellants reference the section of the Specification that discloses the scanner 139 that scans the document 159 and parses the content thereon to find ephemeral interests (App. Br. 5; Spec. 15:29-32).

Appellants contend that the scanning device of DeLorme is not disclosed to be used to produce or generate a publication based at least in part upon an ephemeral interest from an event ticket (App. Br. 26).

Although the system of DeLorme generates a printed publication that may include various ephemeral interests, we agree with Appellants that DeLorme does not disclose a means for inputting ephemeral interests, wherein the means is a scanner, for the same reasons given with respect to claim 7 *supra*.

We find therefore that DeLorme does not teach all the limitations of representative claim 16. Thus, we find error in the Examiner's rejection of claim 16 under 35 U.S.C. § 102(b) as anticipated by DeLorme, and we will not sustain the rejection.

Claims 17-19

We select claim 17 as representative of this group of claims, pursuant to our authority under 37 C.F.R. § 41.37(c)(1)(vii).

Claim 17 requires

logic that inputs an ephemeral interest, wherein the ephemeral interest is of use in identifying at least one content item to be included in the publication, and the ephemeral interest comprising: at least a portion of a travel itinerary, at least a portion of a ticket to an event, or both.

Appellants argue that DeLorme does not disclose that scanned information, such as a portion of a travel itinerary, can be used as a basis for selecting content or options that inputs an ephemeral interest, wherein the ephemeral interest is of use in identifying at least one content item to be included in the publication, and the ephemeral interest further comprises at least one portion of a travel itinerary within the travel itinerary process described in the patent (App. Br. 29).

The Examiner finds that the TRIPS system's graphical user interface of menus, WHERE?, WHO/WHAT?, WHEN?, and HOW?, interactively achieves the logic requirement of claim 17, wherein inputs of ephemeral

interests are used to generate a customized travel plan that may be printed (Ans. 20; FF 3).

We agree with the Examiner's finding that the graphical user interface of the TRIPS system is representative of the logic that inputs the ephemeral interests which will be used to determine the content of the printed publication, for the same reasons given with respect to claim 9 *supra*. We do not find Appellants' argument commensurate with the scope of the claim 17, since claim 17 does not require that the information be scanned.

We therefore find no error in the Examiner's rejection of claim 17 under 35 U.S.C. § 102, nor that of dependent claims 18 and 19 not separately argued with particularity, and we will sustain the rejection of these claims.

Claims 20-28

We select claim 20 as representative of this group of claims, pursuant to our authority under 37 C.F.R. § 41.37(c)(1)(vii).

Claim 20 requires

identifying a number of content items to be included in the publication, wherein at least some of the content items convey information associated with an ephemeral interest, and the ephemeral interest comprising: at least a portion of a travel itinerary, at least a portion of a ticket to an event, or both.

Appellants argue that DeLorme does not disclose that scanned information, such as a portion of a travel itinerary, can be used as a basis for selecting content or options that inputs an ephemeral interest, wherein the ephemeral interest is of use in identifying at least one content item to be included in the publication, and the ephemeral interest further comprises at least one portion of a travel itinerary within the travel itinerary process described in the patent (App. Br. 33).

The Examiner finds that the interactive response of the user with the TRIPS system graphical user interface of menus, WHERE?, WHO/WHAT?, WHEN?, and HOW?, accomplishes the method of inputting ephemeral interests, which are used to generate a customized travel plan that may be printed (Ans. 20; FF 3).

We agree with the Examiner's finding that the user's interaction with the TRIPS system graphical user interface is representative of the method for identifying the number of content items to be included in a printed publication, wherein at least some of the content items convey information associated with an ephemeral interest since DeLorme discloses that the user 100, through a process of steps, uses the graphical user interface to identify a variety of items to be included in their travel planning session (FF 3). We do not find Appellants' argument commensurate with the scope of the claim 20, since claim 20 does not require that the information be scanned.

We therefore find no error in the Examiner's rejection of claim 20 under 35 U.S.C. § 102, nor that of dependent claims 21-28 not separately argued with particularity, and we will sustain the rejection of these claims.

Claims 29-34

We select claim 29 as representative of this group of claims, pursuant to our authority under 37 C.F.R. § 41.37(c)(1)(vii).

Claim 29 requires

code that identifies a number of content items to be included in the publication, wherein at least some of the content items convey information associated with an ephemeral interest, and the ephemeral interest comprising: at least a portion of a travel itinerary, at least a portion of a ticket to an event, or both.

Appellants argue that DeLorme does not disclose that scanned information, such as a portion of a travel itinerary, can be used as a basis for

selecting content or options that inputs an ephemeral interest, wherein the ephemeral interest is of use in identifying at least one content item to be included in the publication, and the ephemeral interest further comprises at least one portion of a travel itinerary within the travel itinerary process described in the patent (App. Br. 36).

The Examiner finds that the TRIPS system's graphical user interface of menus, WHERE?, WHO/WHAT?, WHEN?, and HOW?, interactively achieves the code as recited by claim 29, wherein at least some of the content items identified for inclusion in the printed publication convey information associated with an ephemeral interest (Ans. 21; FF 3).

We agree with the Examiner's finding that the graphical user interface of the TRIPS system is representative of the portion of code that identifies a number of content items to be included in the printed publication, wherein at least some of the content items convey information associated with an ephemeral interest since a graphical user interface is generated by software programming code. We do not find Appellants' argument commensurate with the scope of the claim 29, since claim 29 does not require that the information be scanned.

We therefore find no error in the Examiner's rejection of claim 29 under 35 U.S.C. § 102, nor that of dependent claims 30-34 not separately argued with particularity, and we will sustain the rejection of these claims.

Claim 35

Claim 35 requires a

means for identifying a number of content items to be included in the publication, wherein at least some of the content items convey information associated with an ephemeral interest,

and the ephemeral interest comprising: at least a portion of a travel itinerary, at least a portion of a ticket to an event, or both.

Appellants contend that the scanning device of DeLorme is not disclosed to be used to produce or generate a publication based at least in part upon an ephemeral interest from an event ticket (App. Br. 39).

The Examiner finds that the system means is interactively achieved by DeLorme where a user responds to the questions: WHERE?, WHO/WHAT?, WHEN?, and HOW? (Ans. 22). The Examiner finds further that when the user generates the printed publication, any scanned information can be included as in the publication that “includes related attractions, events, or seasonal activities confined exclusively to ‘their’ accommodations or local venue” (Ans. 22; FF 5).

Although Appellants reference the section of the Specification that discloses a scanner 139 that scans the document 159 and parses the content thereon to find ephemeral interests providing support for *inputting* the ephemeral interest, Appellants define the *means for identifying* a number of content items to be included in a printed publication as the input device 186 of Figure 1 (App. Br. 8; Spec. 10:12-13, 15:29-32).

We agree with the Examiner’s finding that the graphical user interface of the TRIPS system is representative of the means for identifying a number of content items to be included in the printed publication, wherein at least some of the content items convey information associated with an ephemeral interest because a graphical user interface is generated by software programming logic that provides a means for identifying content items shown on monitor 115 by the user 100 as shown in Figure 1A (FF 3).

We therefore find no error in the Examiner’s rejection of claim 35 under 35 U.S.C. § 102 and we will sustain the rejection of this claim.

Claim 36

Claim 36 requires

logic that identifies a number of content items to be included in the publication, wherein at least some of the content items convey information associated with an ephemeral interest, and the ephemeral interest comprising: at least a portion of a travel itinerary, at least a portion of a ticket to an event, or both.

Appellants contend that the scanning device of DeLorme is not disclosed to be used to produce or generate a publication based at least in part upon an ephemeral interest from an event ticket (App. Br. 42).

The Examiner finds that the system logic is interactively achieved by DeLorme where a user responds to the questions: WHERE?, WHO/WHAT?, WHEN?, and HOW? (Ans. 22; FF 3). The Examiner finds further that when the user generates the printed publication, any scanned information can be included as in the publication that “includes related attractions, events, or seasonal activities confined exclusively to ‘their’ accommodations or local venue” (Ans. 23; FF 5).

Although Appellants reference the section of the Specification that discloses a scanner 139 that scans the document 159 and parses the content thereon to find ephemeral interests providing support for *inputting* the ephemeral interest, Appellants define the *logic that identifies* a number of content items to be included in a printed publication as the input device 186 of Figure 1 (App. Br. 8; Spec. 10:12-13, 15:29-32, 22:11-15).

For the same reason as noted *supra* with respect to claim 29, we agree with the Examiner’s finding that the graphical user interface of the TRIPS system is representative of the logic or code that identifies a number of content items to be included in the printed publication, wherein at least some

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of the content items convey information associated with an ephemeral interest.

We therefore find no error in the Examiner's rejection of claim 36 under 35 U.S.C. § 102 and we will sustain the rejection of this claim.

CONCLUSIONS OF LAW

Appellants have shown that the Examiner erred in holding that DeLorme teaches a method for generating a publication including the step of inputting an ephemeral interest into a client by scanning a document that includes an ephemeral interest, such as a travel itinerary or a ticket to an event, to generate a digital representation of the document, wherein the ephemeral interest is used to identify at least one content item to be included in the publication.

ORDER

The Examiner's rejection of claims 9, 12-13, 15, and 17-36 is affirmed. The Examiner's rejection of claims 3, 4, 7, 8, 16, and 37-44 is reversed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED-IN-PART

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babc

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